***United States Court of Appeals***

***for the***

***District of Columbia Circuit***

# TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA
FILED MAR 30 1937
Monael Parker
CLERK

# United States Court of Appeals for the District of Columbia

APRIL TERM, 1937

No. 6836

60

THE NEW NEGRO ALLIANCE, A CORPORATION, ET AL.,
*Appellants,*

*v.*

SANITARY GROCERY COMPANY, INC.,
*Appellee.*

## BRIEF FOR APPELLEE

A. COULTER WELLS,
WILLIAM E. CAREY, JR.,
*Attorneys for Appellee.*

Printed by Law Reporter Ptg. Co., 518 5th St., Washington, D. C.

## INDEX


| | PAGE |
|---|---|
| Statement of Facts | 1 |
| Argument | 2 |
| I. Appellants, Having Admitted the Act of Picketing the Stores of the Appellee, Were Properly Enjoined by the Court Below | 2 |
| II. The Court Below Did Not Err in Granting the Injunction Against Picketing and Boycotting | 7 |
| III. The Court Below Properly Held That the Matter in Controversy Herein Was Not Comprehended by the Labor Disputes Act of March 13, 1932 | 8 |
| IV. Conclusion | 14 |

## CASES CITED


| | PAGE |
|---|---|
| American Federation of Labor v. Buck's Stove and Range Co., 33 App. D. C. 83 | 6 |
| American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184 | 3 |
| Beach v. Teamsters' Protective Union, 118 Michigan 520 | 5 |
| Beck-Hazard Shoe Corp. v. Johnson, 274 N. Y. Sup. 946 | 6, 13 |
| Elkind and Sons, Inc., et al., v. Retail Clerks International Protective Association et al., 169 Atl. 494 | 4 |
| Green v. Samuelson, 178 Atl. 109 | 10 |
| Jonas Glass Co. v. Glass Bottle Blowers' Asso., 72 N. J. Eq. 653 | 3 |
| Julie Baking Co. v. Graymond, 274 N. Y. Sup. 250 | 6 |
| King et al. v. Weiss Company, 266 Fed. 257 | 9 |
| Kinloch Telephone Company v. Local Union No. 2, 275 Fed. 241 | 6 |
| New Negro Alliance et al. v. Harry Kaufman, Inc., 64 App. D. C. 362 | 8 |
| Pierce v. Stablemen's Union, 156 Cal. 70 | 3 |
| Qinlivan, et al., v. Dail-Overland Company, et al., 274 Fed. 56 | 6 |
| Truax v. Corrigan, 257 U. S. 312 | 4 |
| Waitresses Union, Local No. 249, et al., v. Benish Restaurant Company, Inc., 6 F. (2nd) 568 | 6 |

# United States Court of Appeals for the District of Columbia

APRIL TERM, 1937

---

No. 6836

---

THE NEW NEGRO ALLIANCE, A CORPORATION, ET AL.,
*Appellants,*

*v.*

SANITARY GROCERY COMPANY, INC.,
*Appellee.*

---

## BRIEF FOR APPELLEE

---

### Statement of Facts

This cause is before this Court on an appeal from a final order and decree of the District Court of the United States for the District of Columbia (then the Supreme Court of the District of Columbia) permanently enjoining the New Negro Alliance, a corporation, and two of its officers, William H. Hastie and Harry A. Honesty, from picketing or boycotting retail grocery stores of the Appellee, Sanitary Grocery Company, Inc., and was finally disposed of on bill and answer.

Appellee, Sanitary Grocery Company, Inc., is a corporation operating a large number of retail grocery stores in the District of Columbia. Appellant, The

New Negro Alliance, is a corporation, composed of colored persons, its purpose, as stated in its Certificate of Incorporation filed with the Recorder of Deeds of the District of Columbia, on to wit, November 18th, 1933, being for *the mutual improvement of its members and the promotion of civic, educational, benevolent and charitable enterprises* (Record, pp. 3, 15). The other Appellants are the Administrator and Deputy Administrator of the Appellant Corporation.

The sole question involved on this appeal is whether Appellants, *who admit that the relation of employer and employee does not exist between them and the Appellee and that they are not engaged in any competitive business with the Appellee* (Record, p. 17), have the right to picket and boycott the stores of the Appellee for the purpose of compelling Appellee to engage and employ colored persons in managerial and sales positions. *It is admitted that they did so picket and boycott* (Record, p. 16).

Appellee, in this brief, will take up the arguments of the Appellants in the order in which they appear in their brief.

## ARGUMENT

### I

### Appellants, Having Admitted the Act of Picketing the Stores of the Appellee, Were Properly Enjoined by the Court Below.

The record shows that "Said defendants, their pickets or patrols or some of them have jostled and collided with persons in front of the said store and have physically hindered, obstructed, interfered with, delayed, molested, and harassed persons desiring to enter the

place of business of the Plaintiff Corporation; said pickets, or some of them, have attempted to dissuade and prevent persons from entering plaintiff's place of business;" (Record, p. 4).

> "There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity, or peaceful mobbing, or lawful lynching" (Jonas Glass Co. v. Glass Bottle Blowers' Asso., 72 N. J. Eq. 653).

And in the case of Pierce v. Stablemen's Union, 156 Cal. 70, it was said at page 79:

> "A picket, in its very nature, tends to accomplish, and is designed to accomplish, these very things. It tends and is designed by physical intimidation to deter other men from seeking employment in the places vacated by strikers. It tends and is designed to drive business away from the boycotted place, not by legitimate methods of persuasion, but by the illegitimate means of physical intimidation and fear. Crowds naturally collect, disturbances of the peace are always imminent and of frequent occurrence. Many peaceful citizens, men and women, are always deterred by physical trepidation from entering places of business so under a boycott patrol. It is idle to split hairs upon so plain a proposition, and to say that the picket may consist of nothing more than a single individual peacefully endeavoring by persuasion to prevent customers from entering the boycotted place. The plain facts are always at variance with such refinements of reason."

Appellants have cited in their brief the case of American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184. It will be noted that said case, decided by Mr. Chief Justice Taft, involved a *labor*

*dispute* in which Plaintiff operated "an open shop, did not recognize organized labor and would not deal with the committee," and yet, even in that case, so involving a labor dispute, the Chief Justice said "the name 'picket' indicated a militant purpose inconsistent with peaceable persuasion."

It will be further noted that the observer permitted in the American Steel Foundries case was for the purpose of inducing employees to leave their employment, while in the cause at bar *the picket is directed solely at the ruination of Appellee's business.*

In a well reasoned opinion in Elkind and Sons, Inc., et al., v. Retail Clerks International Protective Association et al., 169 Atl. 494, a New Jersey Chancery decision, decided December 6, 1933, the Court said in part:

> "The defendants sought to hide their real purpose behind the pretense that they were seeking to advance the interests of the employees; but this was a service unsought and unasked for by them. It may have been acquiesced in by some, but it was forced upon most of them. The strike agitators were mere volunteers. They sought mainly to advance their own personal interests by demonstrating to their superiors their usefulness in inciting strikes, and their ability to enforce their demands. They assumed the role of those aptly characterized by Vice-Chancellor Fallon in Bayonne Textile Corp. v. American Federation of Silk Workers et al., 114 N. J. Eq. 307, 168 Atl. 799, 803, as 'intermeddlers' * * *"

The same opinion quotes from the case of Truax v. Corrigan, 257 U. S. 312:

> "We held that under these clauses picketing was unlawful and that it might be enjoined as such,

and that peaceful picketing was a contradiction in terms."

The opinion in the Elkind case further states:

> "Picketing is a militant word and the act of picketing is militant in both character and purpose. Its purpose, compulsion or coercion, is accomplished only by intimidation. * * *"
> "Picketing in its mildest form is said to be a nuisance.' And a private nuisance, regardless of its intimidating character or effect, will be enjoined," citing Jonas Glass Co. v. Glass Bottle Blowers' Asso., *supra.*

The question of picketing was very fully discussed in the case of Beck v. Teamsters' Protective Union, 118 Michigan 520, in which the Court said in part:

> "To picket complainant's premises in order to intercept their teamsters or persons going there to trade is unlawful. It itself is an act of intimidation, and an unwarrantable interference with the right of free trade. The highways and public streets must be free for all for the purpose of trade, commerce, and labor. The law protects the buyer, the seller, the merchant, the manufacturer, and the laborer in the right to walk the streets unmolested. It is no respecter of persons, and it makes no difference, in effect, whether the picketing is done 10 or 1000 feet away.
> "It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion. They are intended to intimidate and coerce. * * *"

The proposition is well established that a combination looking towards the domination or ruination of

the business of another by fraud, violence or coercion is fundamentally unlawful.

> Waitresses Union, Local No. 249, et al., v. Benish Restaurant Company, Inc., 6 F. (2nd) 568.
>
> Kinloch Telephone Company v. Local Union No. 2, 275 Fed. 241.
>
> Quinlivan, et al., v. Dail-Overland Company, et al., 274 Fed. 56.

Appellants have cited the case of American Federation of Labor v. Buck's Stove and Range Co., 33 App. D. C. 83, and in their very language support the position taken by the Appellee, that injunction lies against interference with business in cases in which there is violence or the *coercion or intimidation of customers.*

Appellants also cite the case of Julie Baking Co. v. Graymond, 274 N. Y. Sup. 250 (Brief of Appellants, p. 8). Counsel for the Appellants knew, when this case was cited, that the same Court, in the same volume of reports and at a later date, decided a case identical to the one at bar, namely Beck-Hazard Shoe Corp. v. Johnson, 274 N. Y. Sup. 946, in which an organization of negroes picketed stores of the Beck-Hazard Corporation, bearing signs reading "An Appeal. Why spend your money where you can't work? This is foolish. Stay Out. Citizens League for Fair Play," which signs were similar to the signs carried by the pickets herein, and in that case an injunction was granted, the Court, in its opinion, saying in part:

> "The acts of the defendants are irreparably injuring the plaintiff's business. Not only do they tend to keep prospective colored customers out of the store of the plaintiff, but they must necessarily have the effect of keeping out pros-

pective white customers also. The purpose of the defendants in having members of one race discharged in order to employ the members of another race will not justify this direct damage to the plaintiff in the conduct of its business."

## II

## The Court Below Did Not Err in Granting the Injunction Against Picketing and Boycotting

Appellants have cited in their brief only cases involving labor disputes. *No such dispute exists herein* and every instance in which cases have arisen because of picketing by a racial group or organization, it has been held that *such cases did not involve labor disputes and the picketing was enjoined.*

The decree herein granting a permanent injunction (Record, pp. 21, 22) contains no language which requires any of the Appellants to do business with the Appellee, but only *prohibits them from unlawfully interfering with Appellee's business,* and was "SEEN" by counsel for the Appellants before it was signed.

We find in the Record (pp. 4, 5, 6, 7, 8) numerous averments as to articles appearing in the Washington Tribune relating to threats against the Appellee made in open public meetings held by the Appellants herein, showing an intention to picket not only one but several of the Appellee's stores, wthout finding in the Appellants' answer (Record, pp. 12, 15, 16, 17) any denial of the truth of the facts therein set out, the Appellants making only the bare statement that "None of the Defendants is connected with or exercises any control over the Washington Tribune or has caused or permitted the Washington Tribune to publish any article

or news item whatsoever or in any way acted in concert with the Washington Tribune in said publications" (Record, p. 16). The answer of the Appellants further specifically admits that "the defendant corporation has heretofore and prior to the acts herein complained of, picketed or expressed the intention of picketing two other stores of the plaintiff" (Record, p. 16).

This Court will take judicial notice of the fact that the intersection of Eleventh and U Streets, Northwest, where the picketing occurred, is one of the main traffic intersections of the City of Washington, and at many times during the day is very congested and that therefore any picketing of the nature complained of herein may at any time result in violence and disturbance of the peace. It has been affirmatively alleged that interference and intimidation have actually taken place (Record, p. 4).

## III

## The Court Below Properly Held That the Matter in Controversy Herein Was Not Comprehended by the Labor Disputes Act of March 13, 1932

In every decided case similar to the one at bar it has been held that picketing by a racial organization to force on employers the hiring of members of that race, does not involve a labor dispute.

This Court so held in the case of New Negro Alliance (the Appellant Corporation herein) et al. v. Harry Kaufman, Inc., 64 App. D. C. 362. In that case an appeal was taken from a decree granting a preliminary injunction, and the question as to whether a labor dispute was involved was fully presented to this Court under the Labor Disputes Act.

Section 10 of the Labor Disputes Act of March 23, 1932, provides:

> "Whenever any Court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character."

The New Negro Alliance, in its brief filed in this Court in the Kaufman case, No. 6187 in this Court, set forth most of the text of the Labor Disputes Act of March 23, 1932, raising, on appeal, particularly the question of an appeal from a preliminary or temporary injunction in an alleged labor dispute, and *this Court dismissed the appeal.* In view of Section 10 of the Act, above quoted, *such dismissal could be predicated only upon a decision that no labor dispute was involved.*

In a concurring opinion by Mr. Justice Groner, holding that the appeal should be dismissed on its merits, the case of King et al. v. Weiss Company, 266 Fed. 257, was cited. This decision is in itself ample authority to sustain the decision below. In the King case *white* workers in a plant struck and acts of intimidation which prevented *colored* employees from working were restrained, although such acts would not necessarily have prevented white workers from continuing in employment; the case being one of intimidation, and the

timid being entitled to protection against unlawful threats and intimidation, even though the acts would not be sufficient to affect bolder persons.

There have been but two decisions of Appellate Courts on the identical issue involved on this appeal, and in both such cases, decisions adverse to the contentions of the Appellants herein were handed down. The first decided case on the question was that of Green v. Samuelson, 178 Atl. 109, decided April 2, 1935. This case involved the picketing of stores in a colored section of Baltimore, Md., by an organization of negroes, similar to the Appellant Corporation herein, and the Court of Appeals of Maryland, in deciding the case, said in part:

> "So far as we are able to ascertain, this is the first time the question here presented has arisen in an appellate court, and our information is that the case in the court appealed from is the first time it has been presented to any tribunal. About a month after the bill was filed in the circuit court for Baltimore City a similar bill was filed in New York, Beck Shoe Corporation v. Johnson, 153 Misc. 363, 274 N. Y. S. 946, and both chancellors declined to regard the question as a labor dispute, and, on the ground of public policy, granted the relief prayed by the bills for injunction. They have already excited some attention as will appear from 83 Pa. Law Rev. 381, and 48 Harvard Law Rev. 691."

In the Green case there was "no evidence of physical violence and/or disturbance of the peace," and the answer filed in that case set out:

> "And denying that they 'Coerced, intimidated or forced' storekeepers in the immediate neighborhood of the plaintiffs to 'discharge white employees and to hire in their stead negro employees.' "

which is substantially the same answer made by the Appellants herein (Record, p. 15). The Maryland Court, in answering said defense, said:

> "The defendants contend that this case is, or is akin to, a labor dispute, because their purpose is to secure employment for members of their race and thus improve its condition and that it has such a justifiable cause as to warrant their actions in enforcing their demands by the methods commonly called 'picketing.' International Pocketbook Workers v. Orlove, 158 Md. 496, 148 A. 826. They disclaim any intention or purpose of depriving the plaintiffs' employees of their positions or livelihood, yet, if successful, their activities could have no other result. It is not denied that there is no quarrel or dispute between employers and employees and none between the defendants and those employees. Their grievance is that the defendant merchants depend almost wholly on colored patronage for their existence and that these merchants do nothing for them in return. That there is some merit in their complaint cannot be disputed, as the planting of a white store in an exclusively colored community is an exploitation of the inhabitants for profit, but the defendants cannot right their wrongs by means that are unlawful. The defendants and others of their race have a perfect right to buy where they please. Nor is there anything 'unlawful in the action of a combination who by concerted action cease to patronize a person against whom a concert of action is directed when they consider it is to their interest to do so." 12 C. J.; Code, Art. 27, 43. * * *
>
> "(3) The defendants do not contend that this is a labor dispute as commonly recognized, but, to justify their actions in instituting a boycott carried on by picketing, they invoke the rules applied to such disputes. There is no question here in-

volved of hours, wages, working conditions, or the right to organize. Whatever of organization there is made up of colored men and women of various professions, occupations, and callings, to promote the interests of the colored race generally by obtaining employment for its people. The general purpose of colored persons to improve their race may not be improper, but they must adopt lawful means to accomplish this end, and must not resort to intimidation and threats which may easily lead to breach of the peace and physical violence. As said in My Maryland Lodge v. Adt, 100 Md. 238, 249, 59 A. 721, 723, 68 L. R. A. 752: 'They have an unquestionable right to present their cause to the public in newspapers or circulars in a peaceable way, but with no attempt at coercion. If ruin to the employer results from their peaceable assertion of these rights, it is a damage without remedy. But the law does not permit either employer or employee to use force, violence, threats of force or threats of violence, intimidation, or coercion.'

"They may, by organization, public meetings, propaganda, and by personal solicitation, persuade white employers to engage colored employees and to induce their people to confine their trade to those who accede to their wishes, and whether they succeed or fail will depend on the co-operation of their people.

"(4, 5) The complaint here is not with the thing intended to be done, but with the means employed to do it. The case immediately before us is the effort of a race to improve its condition in a section of a large city inhabited almost exclusively by one race, and no way has been pointed out to us, and we know of none, whereby the courts can make a rule to apply to the conditions there existing which would not be applicable where the same racial conditions do not exist. If we say what was being done in the seventeen hundred block on Penn-

sylvania Avenue in Baltimore was proper, then it can be done in any other block in the city; there cannot be one law for Pennsylvania Avenue and another for streets where the white races predominate and trade, and the courts, in laying down a rule of conduct, must not only consider what has been done but what may be done in consequence of it.

"In our opinion, this is a racial or social question, and as such, the rules heretofore announced and applied to labor disputes have no application, and the things complained of were properly enjoined * * *"

And in the case of Beck-Hazard Shoe Corp. v. Johnson, *supra,* the Court further said:

"The controversy here is not a labor dispute. The Defendants do not constitute a labor union or a labor organization of any kind. They do not compose, nor are they all members, of any single trade or class of trades. Their demands are not connected with any one industry.

"The questions about which they are now picketing have no connection with wages, hours of labor, unionization, or betterment of working conditions.

"It is solely a racial dispute. It is born of an understandable desire on the part of some of the negroes in this community that the stores in their neighborhood where they spend their money should employ a percentage of negro help. Their exclusive concern is that a certain number of white persons be discharged in order to make place for members of their own race.

"The papers on this motion indicated that there is no unanimity of opinion among the negro leaders themselves as to the wisdom of this course of conduct. Editorial comment from a popular and prominent newspaper published in this community by negroes and read by negroes principally has

been submitted to the Court, indicating opposition to the activities of the defendants. The Citizens League for Fair Play is apparently now also out of sympathy with them.

"The Court must take into consideration the ends to be accomplished and the means here adopted by these defendants. Assuming that the means were peaceful and were devoid of misrepresentation, disorder, or violence, the Court is still of the opinion that the purpose sought does not justify the means used, and that injunctive relief is warranted."

The Appellee employs a large number of colored persons (Record, p. 2), and enjoys harmonious relations with them. None of such colored employees of the Appellee are connected with the Appellant Corporation or its activities. Appellant Corporation does not constitute a labor union or a labor organization of any kind, and there is no question here involved regarding wages, hours of labor, unionization, or betterment of working conditions.

## IV

## Conclusion

Counsel for Appellee respectfully submit there is no Labor Dispute involved herein, and that the Court below properly enjoined the Appellants, who were all actively engaged in the matters complained of, from unlawfully picketing and boycotting the Stores of the Appellee, and that the decree entered in the Court below should be affirmed.

Respectfully submitted,

A. Coulter Wells,
William E. Carey, Jr.,
*Attorneys for Appellee.*

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED MAR 9 - 1937

Monroe Burke
CLERK

# United States Court of Appeals for the District of Columbia

APRIL TERM, 1937

---

No. 6836

---

THE NEW NEGRO ALLIANCE, A CORPORATION, ET AL.
*Appellants*

vs.

SANITARY GROCERY CO., INC.
*Appellee*

---

## BRIEF FOR APPELLANTS

---

BELFORD V. LAWSON, JR.
WILLIAM H. HASTIE,
*Attorneys for Appellants.*

Murray Brothers Printers, 920 U St., N.W., Washington, D.C.

# INDEX


Page

Statement of Facts ..... 1

Argument ..... 4

Conclusion ..... 14


## CASES AND OTHER AUTHORITIES CITED


American Federation of Labor vs. Buck Stove Co., etc., 33 App. D. C. 85 ..... 6

American Steel Foundries vs. Tri-City Trades Council, 257 U. S. 184 ..... 5

Beck vs. Railway Teamsters' Protective Union, 118 Mich. 497 ... 7

Bender vs. Local Union No. 118, 34 W. L. R. 574 (1906) ..... 6

Cinderella Theatre Co. vs. Sign Writers Local Union, 6 F., Supp. 164 (1934) ..... 13

City of St. Louis vs. Gloner, 210 Mo. 502 ..... 9

Davis vs. Henry, 266 Fed. 261 (C. C. A. 6th, 1920) ..... 5

Green vs. Samuelson, 168 Md. 421 ..... 7

Julie Baking Co., Inc., et al., vs. Graymond, etc., et al, 274 N. Y. Supp. 250; New York Law Journal, August 17, 1934, Special Term, Part 1, by Hofstadter, J. ..... 8

King vs. Weiss & Lesh Mfg. Co., 266 Fed. 257 ..... 7

Leverling & Garrigues Co. vs. Morrin 71 F. (2nd) 284 ..... 13

Miller Parlor Furniture Co. vs. Furniture Workers, 8 F. Supp. 209 ..... 13

Segenfeld vs. Friedman, 193 N. Y. Supp. 128 ..... 10


## STATUTES


U. S. Code, Title 29, 47 Stat. 70 ..... 11

# United States Court of Appeals for the District of Columbia

APRIL TERM, 1937

---

No. 6836

---

THE NEW NEGRO ALLIANCE, A CORPORATION, ET AL.
*Appellants*

vs.

SANITARY GROCERY CO., INC.
*Appellee*

---

## BRIEF FOR APPELLANTS

---

## STATEMENT OF FACTS

This is an appeal from a final order and decree of the District Court of the United States for the District of Columbia (then the Supreme Court of the District of Columbia) permanently enjoining the New Negro Alliance, a corporation, and two of its officers, William H. Hastie and Harry A. Honesty, from picketing or boycotting a particular retail grocery store of the Sanitary

Grocery Company, Inc., or any other store of that company. *The cause was heard and finally disposed of upon bill and answer.* (See opening statement of the permanent injunction, Record, p. 21.) The pertinent facts, therefore, are those established by the pleadings.

The appellee, the Sanitary Grocery Co. (hereinafter designated as "plaintiff") is a corporation operating a number of retail grocery stores in the District of Columbia. The appellant New Negro Alliance (hereinafter designated as "defendant") is a membership corporation organized for the betterment and mutual advancement of its members. William H. Hastie and Harry A. Honesty (hereinafter designated as "defendant officers") are Administrator and Deputy Administrator of the New Negro Alliance. The present controversy arose out of request made of the plaintiff by the defendant through the defendant officers on behalf of persons seeking employment that the plaintiff adopt a policy of employing Negro clerks in certain of its retail grocery stores. The refusal of the plaintiff to grant or even acknowledge such requests *and the discontinuance of the employment of Negro clerks in certain stores of the plaintiff* are the matters in controversy.

The actual conduct of which the plaintiff complains and upon which this suit was founded was the peaceful patrolling of a single person in front of one of the plaintiff's stores on a single day. This person acted on behalf of the defendant and carried a placard exhibiting the legend, "DO YOUR PART! BUY WHERE YOU CAN WORK! NO NEGROES EMPLOYED HERE!" It is stated and admitted in the record that "the information conveyed by the placard borne as aforesaid was wholly true and was not intended and did not in fact coerce or intimidate customers of the plaintiff" and that "none of the defendants nor any picket

or other person acting on behalf of any of the defendants has physically hindered, obstructed, interfered with, delayed or harassed persons desiring to enter the place of business of the plaintiff, or acted in a disorderly manner or caused or encouraged crowds to gather in front of the plaintiff's store" (Record, p. 16). It is further admitted that the condition in front of the said store throughout the period of picketing was substantially that revealed by the photographs which were exhibits to the plaintiff's bill and appear in the present record (Record, pp. 13, 14, 16).

It is also set out in the record that the defendants were not party to any conspiracy (Record, p. 16); that the defendant officers did not do or cause to be done any of the acts complained of other than to make the aforesaid requests upon the plaintiff, and in making such requests they acted solely as agents of the defendant (Record, pp. 15, 16); and that the defendants have not requested the discharge of any present employees of the plaintiff but have merely asked that the plaintiff adopt a policy of giving employment to Negro clerks in the regular course of personnel changes.

## ASSIGNMENTS OF ERROR

The four assignments of error which will be discussed in this brief are as follows:

1. The court erred in finding actual or threatened interference with plaintiff or its customers by defendants through force, threats, disorderly assemblage and destruction of property.
2. The court erred in ruling in effect that the provisions of the Act of March 23, 1932, concerning the issuance of injunctions in cases involving labor disputes are not applicable to this case.
3. The court erred in ruling in effect that as a matter of general law the acts of peaceful picketing and patrolling admitted by defendants' answer are unlawful.

4. The court erred and denied to the defendants their Constitutional rights of free speech and personal liberty in restraining them from boycotting plaintiff's business.

The first and third assignments will be discussed together. Each of the others will be treated separately.

## ARGUMENT

### I

### THE RECORD REVEALS NO UNLAWFUL ACT OF THE DEFENDANTS UPON WHICH INJUNCTIVE RELIEF AGAINST PICKETING MIGHT BE PREDICATED

It will hardly be disputed that to justify such relief as has been sought and granted in this case there must be both unlawful action by the defendant and injury to the plaintiff. The mere fact of injury, actual or threatened, is not enough. That injury must result from acts which are themselves wrongful. Thus the gravamen of the present complaint is that the defendants have threatened and intimidated customers, indulged in disorderly conduct, joined in an unlawful conspiracy and made false representations about plaintiff and its business, all to the irreparable damage of the plaintiff. In brief, it is alleged that various torts, legal wrongs, have been committed by the defendants and that a court of equity should enjoin these wrongs because there is no adequate remedy at law. If the denials and allegations of the answer, the truth of which has been admitted upon the present record, show that no such wrongs have been committed, there is no proper basis for the injunction.

*a. The record shows no actual or threatened interference with plaintiff or its customers by defendants through force, threats, disorderly assemblage or destruction of property.*

The answer expressly denies all allegations of tortious conduct. Moreover it is expressly alleged that the peaceful patrolling of a single person upon the public sidewalk in front of the plaintiff's store during the business hours of one day was the only conduct attributable to the defendants, or any of them. The exhibits to plaintiff's bill (Record, pp. 13, 14) are accurate pictorial representations of that conduct.

Although a few State courts have taken the position, erroneously it is submitted, that any picketing or patrolling is disorderly and threatening, the settled rule of the Federal courts is that the factual situation of each case determines whether disorder, intimidation or other unlawful conduct is involved in picketing. Thus, in *American Steel Founderies v. Tri-City Central Trades Council,* 257 U. S. 184, the Supreme Court was careful to distinguish between peaceful persusian, lawful prodecure not subject to injunction, and action of intimidating or violent character. The court further pointed out that a single picket might lawfully be stationed at each entrance of the establishment in question though a crowd or large number of pickets would be unlawful by reason of their tendency to intimidate. It was in this case that Chief Justice Taft pointed out that "the purpose of injunction should be to prevent the inevitable intimidation of the presence of groups of pickets but to allow missionaries."

Similarly, in *Davis* v. *Henry,* 266 Fed. 261, the Circuit Court of Appeals for the 6th Circuit, in setting aside an injunction said:

> "The order appealed from went too far in enjoining against 'interfering in any way—directly, or indirectly, with the plaintiff—and from picketing highways or means of ingress and egress to and from said plant of said buggy company'—acts which do not necessarily constitute an unlawful interference."

This court has been careful to limit injunctions against interference with business to the restraining of acts of violence or the coercion or intimidation of customers.

*American Federation of Labor v. Buck's Stove and Range Co., 33 App. D. C. 85; Bender v. Local Union, No. 118, W.L.R. 574.*

*It is to be emphasized that this question of whether or not the acts complained of are themselves tortious or otherwise illegal is not dependent upon the relation of the parties or the nature of the controversy.* And the Federal doctrine is clear that the peaceful patrolling of a single person in front of a place of business so as to make known a complaint against that business is not of itself a disorderly or intimidating act.

*b. The record shows no conspiracy among the defendants.*

The answer categorically denies that the defendants have been party to any conspiracy (Record, p. 16.) And there are no undenied allegations of the bill upon which a finding of unlawful concert can be predicated. The defendant officers are not connected in any way with the picketing. The answer shows that the defendant corporation, and it alone caused the picketing (Record, p. 16) and that the defendant officers did no more than to write to the plaintiff requesting certain changes in employment policies. Quite apart from the legality of these ends, there is no showing whatever that the parties conspired with each other or with any other person or persons.

*c. The record shows no misrepresentation of fact.*

The record shows, and is not disputed, that the placard carried by the picket told the truth. Indeed, there is no allegation in the bill that the defendants have made any misrepresentation of fact. It is alleged that the defendants have threatened to make false representa-

tions that the plaintiff does not employ colored persons (Record, p. 30) but this allegation is denied (Record, p. 15).

*d. Cases involving "mass picketing" and other intimidating conduct are distinguishable.*

Illustrative of the distinction between the case at bar and cases involving intimidation or otherwise unlawful conduct is *Green* v. *Samuelson,* 168 Md. 421. There, in a controversy somewhat similar to the one at bar the court ordered a modification of an injunction restraining all acts interfering with defendant's business, pointing out that the group of Negroes there asserting demands for employment should not be restrained from lawful acts of asserting, publicizing or seeking support for their demands, but merely from mass picketing and acts calculated to intimidate rather than persuade others.

The oral opinion of the court below (Record, p. 18,20) relies upon *King* v. *Weiss & Lesh Mfg. Co.,* 266 Fed. 257 as authority for the issuance of an injunction in this case. But in the *King* case mass picketing had resulted in intimidation of employees and the trial court had so found. The Circuit Court of Appeals ruled that the question of intimidation was a question of fact upon which the evidence justified a finding that employees had been intimidated. *In the present case the facts affirmatively show the absence of intimidation.* Thus the King case is a precendent for denying, rather than granting an injunction here.

The Court also relied upon *Beck* v. *Railway Teamsters' Protective Union,* 118 Mich. 497. Though this is a leading case in a jurisdiction far less liberal than the District of Columbia or the Federal jurisdictions generally in permitting picketing, it does not support the present injunction. There had been force and violence, and admittedly so, in the Beck case. There had been intimi-

dation. Mass picketing had occurred. The rationale of the decision is that intimidation as well as physical violence may be restrained. There is no intimation that picketing would have been restrained in the absence of intimidation, although violence and intimidation were deemed justification for banning all the acts responsible for such results. Thus, this case is not in conflict with the Federal doctrine of permitting peaceful persuasion through picketing or otherwise in the absence of violence or intimidation.

The only tenable doctrine in cases involving no violence, threats or intimidation has been thus expressed in a case involving picketing by consumers protesting the price of bread at the picketed bakery:

> "I conceive that it is clear in reason and principle that picketing not accompanied 'by violence, threats or intimidation, expressed or implied' and having a lawful purpose should not be enjoined.* *
>
> "The right of an individual or group of individuals to protest in a peaceful manner against injustice or oppression, actual or fancied, is one to be cherished and not to be prescribed in any well-ordered society. It is an essential prerogative of free men living under democratic institutions. And it is salutary for the state in that it serves as a safety valve in times of stress and strain."
>
> *Julie Baking Co. v. Graymond, 274 N. Y. Supp. 250.*

To the same effect is a recent Missouri decision:

> "It is said, however, for the City that John Smith, a member of the public, has no right for his own private purposes, whatever they may be, to take his stand for a period of two hours every day upon a particular portion of the street***. That he has such a right there can, in our opinion be no question, providing he conducts himself in a peaceful, orderly manner, disturbs no one, and commits no overt act. In this case, according to the testimony

> of the officer who made the arrest, he arrested the defendant for the purpose of preventing him from doing picket duty.***If these defendants are not permitted to tell the story of their wrongs, of, if you please, their supposed wrongs, by word of mouth or with pen and print, and to endeavor to persuade others to aid them by all peaceful means, in securing redress of such wrongs, what becomes of free speech, and what of personal liberty* * *?"
>
> *City of St. Louis v. Gloner*, 210 Mo. 502

It is submitted that upon the record the defendants have done no unlawful act and that, therefore, the injunction against them was improvidently and erroneously issued.

## II

### THE COURT ERRED AND INFRINGED THE DEFENDANTS' RIGHTS OF FREE SPEECH AND PERSONAL LIBERTY BY RESTRAINING THEM FROM "BOYCOTTING" PLAINTIFF'S BUSINESS AND PEACEFULLY PERSUADING OTHERS NOT TO PATRONIZE THAT BUSINESS

The paragraph of the permanent injunction numbered "2" (Record, p. 22) contains a general prohibition against "boycotting" plaintiff's business and paragraph "3" prohibits any "inducement" of persons not to do business with the plaintiff. This language prohibits the defendants from refusing to trade with the plaintiff and prohibits them from peacefully persuading other persons to refrain from trading with the plaintiff. It is to be noted that these prohibitions are additional to and distinct from the prohibition against picketing.

In modifying a similarly inclusive injunction in *American Federation of Labor v. Bucks Stove and Range Co., supra*, the court made the following statement which

is as applicable to the present injunction as to the one then under consideration.

> "We have no power to compel the defendants to purchase complainant's stoves; we have no power to prevent defendants, their servants and agents, from preventing others from purchasing from them." (at p. 110).

In the same way the court in *Bender* v. *Local Union, supra,* refused to restrain the defendants from their efforts to persuade others not to deal with the plaintiff and found that such acts, if peaceful and not intimidating, are not unlawful.

But the prohibition against refusal to trade with plaintiff or peacefully persuading others similarly to refuse is not only error as a matter of established principles of equity, it is also a denial of Constitutional rights of personal liberty. *In City of St. Louis* v. *Gloner, supra,* the Missouri court held that even a denial of the right to picket peacefully "infringes upon the right of personal liberty, and is unreasonable and oppressive." Similarly, in *Segenfeld* v. *Friedman,* 193 N. Y. Supp 128, the right of peaceful persuasion, whether through the device of picketing or other means of publication, is described as a Constitutional right.

> "I know of no sound principle of law which prohibits orderly picketing, or that which does not transgress on the rights of others. Indeed, a great body of law affirmatively establishes the opposite proposition. The right to picket is founded on constitutional principles, and although it might appear that some recent adjudications in certain jurisdictions encroach upon this right, the constitutional, guaranty still survives and must be respected and upheld." (At page 130.).

It is submitted that the court below restrained acts which Congress itself could not prohibit without infring-

ing the right of free speech guaranteed by the 1st Amendment of the Constitution and the right of personal liberty safeguarded by the 5th Amendment.

## III

### THE COURT ERRED IN HOLDING THAT THE CONTROVERSY HERE IS NOT COMPREHENDED BY THE ACT OF MARCH *23, 1932*

The preceding argument has been directed to the issues of general law presented by this case quite apart from any statutory restriction upon the jurisdiction of the court. It remains to consider the effect to the Act of March 23, 1932 (47 Stat. 70) which deprives courts of the District of Columbia of power to restrain peaceful picketing in cases involving "labor disputes" as defined in that Act and prescribes procedural prerequisites for the issuance of any injunction in a case involving a "labor dispute." It is not denied that the injunction was issued in this case without compliance with such requirements and that, if this case is within the purview of the statute, the action of the court below was improvident and in excess to its jurisdiction.

Section 13 of the Act describes the situations involving labor disputes to which the statute applies:

> "(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interest therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers (2) between one or more employers or associations of employers and one or more employer and associations of employers; or (3) between one or more employees or associations of employees and one or more employees

or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined.).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia (March 23, 1932, c. 90, 13, 47, Stat. 73)."

The matters in controversy here are (1) the discontinuance of the services of employees of a particular group by the plaintiff and (2) the refusal of the plaintiff to give this group opportunity for employment in a newly opened establishment. Acting on behalf of the group thus discriminated against in employment, the defendant Alliance is properly deemed to be engaged in a labor dispute within the meaning of the statue. Thus, the record shows that the case "involves conflicting interests in a labor dispute of persons participating or interested therein" as shown by the circumstances that "relief is sought against", the defendants, that the defendant Alliance represents persons seeking employment

in plaintiff's business and as such representative has "direct or indirect interest" in the "occupation in which such dispute occurs," and that this dispute is a "controversy concerning the association of persons seeking to arrange terms or conditions of employment."

The fact that none of the defendants are employees of the plaintiff is immaterial. The courts have been clear in the few cases that have arisen under the 1932 Act that the statute protects so-called "outsiders" attempting to change employment policies even though present employees make no complaint.

> *Levering and Garrigues Co. v. Morrin, 71F. (2d) 284; Miller Parlor Furniture Co. v. Furniture Workers, 8 F. Supp. 209; Cinderella Theatre Co. v. Sign Writers' Local Union, 6F. Supp 164.*

The sole difference between the present case and those cited is that Negro labor has been discriminated against rather than organized labor generally. The nature of the controversy is the same in either case. To say that the 1932 Act governs controveries concerning discontinuance of union labor generally but does not concern discontinuance of Negro employees is to read into the Act a limitation that is neither expressly stated nor fairly implied. The subject matter of each controversy makes it a labor dispute although the basis of classification of those seeking work or those who have dropped from the rolls, may differ.

## IV

## CONCLUSION

The appellants respectfully submit that the court below erred in issuing the injunction herein complained of and that the order of that court ought to be reversed and set aside and its injunction dissolved.

Respectfully submitted:

BELFORD V. LAWSON, JR.,
*Attorney for the Appellants*
WILLIAM H. HASTIE,
*In propria persona.*